

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**PETER SUNG OHR, REGIONAL DIRECTOR)
OF REGION 13 OF THE NATIONAL LABOR)
RELATIONS BOARD, FOR AND ON BEHALF)
OF THE NATIONAL LABOR RELATIONS)
BOARD)**

Civil No. 15-cv-08885

Petitioner,

v.

**Judge Amy J. St. Eve
Magistrate Judge Daniel G. Martin**

ARLINGTON METALS CORPORATION)

Respondent)

**Pre-hearing Brief of Amicus Curiae United Steelworkers in Support of the Petition for
10(j) Relief**

Amicus USW wishes to make two points in advance of the hearing in this case. First, the history of this case shows sustained employee support for collective bargaining at the Respondent's Franklin Park facility and the diminution of that support is due to the Respondent's illegal conduct. Second, the issuance of an injunction is the only way to ensure that the workers at that facility will have a realistic opportunity to finally bargain a first labor agreement.

1. The workers at the Respondent's facility have voted twice to form a union. After a secret ballot-election in the Fall of 2007, they stood steadfast even as the economy crashed in 2008. After the employer used the crash to implement more onerous terms of employment in 2009 and 2010, they continued to support the union in an effort to reclaim their former wages and insurance benefits. Five years after the first election the workers re-affirmed their desire to form a union in a second secret ballot election in the summer of 2012.

After this second election, the Respondent refused to even meet with union representatives to bargain for a contract. Accordingly, the NLRB issued a Complaint seeking an order to require Respondent to bargain in good faith with the duly selected representative of its employees. In July 2013, Respondent settled this Complaint by agreeing to recognize and bargain with the USW for one year.

The ALJ in this case found that Respondent went through the motions of bargaining in the Fall of 2013 and this conduct violated the statutory requirement that the parties bargain in good faith. He further found that Respondent's refusal to provide financial information to support the claims it was making at the bargaining table stalled the bargaining process. These findings were based upon an extensive record compiled in a three day trial.

One day after agreed one-year period, Respondent withdrew recognition from the USW. It rushed to do this. While Respondent contends that it acted based upon an employee petition, the Vice-President of the Company conceded at the trial before the ALJ that he did not check the signatures on the petition to determine whether they were valid and that he was unfamiliar with the signatures of many new employees. In addition, the petition contained signatures from employees who the Respondent believed did not belong in the unit represented by the USW.

Since the withdrawal of recognition, the Respondent has refused to meet with or deal with the USW.

Contrary to the claims of the Respondent and its supporters from the so-called "Right to Work" Legal Defense Foundation, granting the injunction in this case will vindicate the right of workers to freely select their bargaining representative. Respondent's persistent illegal conduct has plainly eroded the support of the workers for the USW because that conduct has made it seem futile

to engage in bargaining. Respondent reneged on its agreement to bargain in good faith and that action had predictable results. The injunction will give the bargaining process time to work and it will restore the level playing field that is now tilted due to the Respondent's violations of the National Labor Relations Act.

2. It is important to compare the likely future of this proceeding depending on the Court's action. If the Court issues the injunction, the Respondent will have to disclose financial information which supports its bargaining position and it will have to recognize and bargain in good faith with the USW. If the parties reach a contract, the employees in the unit will have an opportunity to review and vote on it. If Respondent does not continue to violate the law and no contract is reached, dissatisfied employees may still seek a secret ballot election on the issue of whether they want to be represented.

If the Court does not issue an injunction, it is unlikely in the extreme that bargaining will take place absent an order from the Court of Appeals, either in the instant case or in the underlying unfair labor practice case. Such an order is unlikely to issue for more than a year. That lapse of time will only make the current situation worse because it will increase the possibility that employees will feel that collective representation is futile. Any disaffection caused by the Respondent's illegal conduct will increase and make bargaining still more difficult.

The only scenario, therefore, which respects the twice expressed desire for union representation is to issue the injunction in this case. The balance of equities in this case demands this result.

Respectfully Submitted

/s/ Stephen A. Yokich

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Pre-hearing Brief of Amicus Curiae United Steelworkers in Support of the Petition for 10(j) Relief, has, this 11th day of November 2015 been served in the manner indicated upon the following parties of record:

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